

AMENDED IN SENATE JUNE 1, 2010
AMENDED IN SENATE MAY 11, 2010
AMENDED IN SENATE APRIL 27, 2010
AMENDED IN SENATE APRIL 7, 2010

SENATE BILL

No. 930

Introduced by Senator Ducheny
(Coauthors: Senators Alquist, Florez, and Romero)
(Coauthors: Assembly Members Coto and V. Manuel Perez)

February 2, 2010

An act to amend Sections 60640 and 60643 of, and to add Section 52052.7 to, the Education Code, relating to pupil assessments.

LEGISLATIVE COUNSEL'S DIGEST

SB 930, as amended, Ducheny. Pupil assessments.

(1) Existing law, the Public School Performance Accountability Program, provides a state assessment program for schools, an intervention program for low-performing schools, and a reward system for high-achieving schools, as specified.

This bill would require that any primary language assessment developed by the department and administered to limited English proficient students, as defined, on or after July 1, 2013, to be included in any successor measure to the state's assessment system and in any successor measure to the state's federal and state accountability system. The bill would require the results of the primary language assessment to be used in any successor measure to the state's assessment systems and in any other successor measure, as specified.

(2) Existing law establishes the Standardized Testing and Reporting Program, known as the STAR Program. Existing law requires each

school district, charter school, and county office of education to administer a standards-based achievement test, known as the California Standards Tests, to all pupils in grades 2 to 11, inclusive. Existing law authorizes a school district to administer a 2nd test in the pupil's primary language to pupils with limited English proficiency who receive instruction in their primary language or have been enrolled in a school in the United States for less than 12 months.

The bill would require any successor state assessment system adopted on or after July 1, 2013, to include accommodations for English learners that will allow meaningful participation in the assessments and that address the unique linguistic and sociocultural needs of the English learner without altering the test construct. This bill would authorize a 2nd test in the pupil's primary language to be given to pupils with limited English proficiency, as specified. The bill would authorize schools providing dual immersion programs to use specified language tests to assess pupils who are nonlimited English proficient. This bill would provide that the results of a primary language assessment given to English learners shall also be used for the purposes of the Academic Performance Index beginning in the 2012–13 school year. The bill would require school districts to provide specified accommodations to pupils who are English learners while taking these tests, thereby imposing a state-mandated local program.

(3) Existing law requires test publishers who wish to be considered for eligibility for the development of the California Standards Tests to adhere to specified requirements, including that the test publisher provide valid and reliable aggregate scores to school districts and county boards of education in specified forms and formats.

This bill would additionally require these test publishers to provide valid and reliable aggregate scores to school districts and county boards of education in a format that would show, for pupils who are English learners, their program of instruction, time in the program of instruction, and their English proficiency level as determined by the California English Language Development Test.

(4) *This bill would become operative on January 1, 2012.*

~~(4)~~

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state,

reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature finds and declares all of the
2 following:

3 (1) The federal No Child Left Behind Act of 2001 (20 U.S.C.
4 Sec. 6301 et seq.) requires states to test all pupils in a valid and
5 reliable manner and requires, to the extent practicable, that pupils
6 with limited English proficiency be tested in the language and
7 form most likely to yield accurate data on academic subject areas.

8 (2) Approximately one of every four pupils enrolled in
9 California's public schools is identified as a pupil with limited
10 English proficiency.

11 (3) The current academic assessment system does not allow
12 pupils with limited English proficiency to show academic ability
13 in academic subject areas.

14 (4) Exclusive reliance on academic assessments designed for
15 native English speakers to gauge the academic progress of pupils
16 with limited English proficiency violates standards for educational
17 testing established by recognized national educational institutions,
18 including the American Educational Research Association, the
19 American Psychological Association, and the National Council
20 on Measurement in Education.

21 (5) Valid and reliable academic assessment data is critical to
22 the education accountability system.

23 (6) An accountability system that would yield more accurate
24 data on the academic ability of pupils with limited English
25 proficiency is needed.

26 (7) Local educational agencies should not experience negative
27 consequences solely based on the scores of recent immigrant pupils
28 on tests that do not provide valid and reliable diagnostic
29 information about what these pupils know and can do in academic
30 subject areas.

31 (b) It is therefore the intent of the Legislature to bring the system
32 of assessing the academic progress of pupils with limited English
33 proficiency into alignment with the requirements of the federal

1 No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.),
2 including the requirement that states test all pupils in a valid and
3 reliable manner and, to the extent practicable, in the language and
4 form most likely to yield accurate data on academic ability in
5 academic subject areas. It is also the intent of the Legislature that
6 California's state assessments be valid and reliable assessments
7 for pupils who are English learners and for pupils with
8 developmental disabilities and that the provision of
9 accommodations enable their participation in these state
10 assessments pursuant to the core assurances of the American
11 Recovery and Reinvestment Act of 2009 (Public Law 111-5).

12 SEC. 2. Section 52052.7 is added to the Education Code, to
13 read:

14 52052.7. (a) Any primary language assessment developed by
15 the department and administered to pupils identified as limited
16 English proficient pursuant to Section 60810 and as defined in
17 subdivision (g) of Section 60640 on or after July 1, 2013, shall be
18 included in any successor measure to the state's assessment system
19 and shall be included in any successor measure to the state's federal
20 and state accountability system. The results of the primary language
21 assessment shall be used in any successor measure to the state's
22 assessment systems and shall be used in any successor measure to
23 the state's federal and state accountability system.

24 (b) Any successor measure to the state's assessment system
25 adopted on or after July 1, 2013, shall modify the achievement test
26 administered pursuant to Section 60642.5 in order to eliminate
27 linguistic complexity, to the extent practicable. The modifications
28 shall be based upon research designed to maintain the rigor of the
29 test.

30 (c) Any successor state assessment system adopted on or after
31 July 1, 2013, shall include accommodations for English learners
32 that will allow for meaningful participation in the assessments and
33 that address the unique linguistic and sociocultural needs of the
34 English learner without altering the test construct. The
35 accommodations shall include:

36 (1) A word-to-word glossary, without definitions, in English
37 and in the top 10 languages indicated by the language census
38 submitted to the department by the districts. The glossary shall
39 include frequently used general academic words as well as
40 discipline-specific words used in the assessments.

1 (2) The repetition of test directions at the request of a pupil.

2 (3) Translations of the test directions in the top 10 languages
3 indicated by the Language Census submitted to the department by
4 the districts.

5 (4) The department shall provide to the districts the bilingual
6 glossaries prepared pursuant to paragraph (1) and the translations
7 of test directions prepared pursuant to paragraph (3).

8 (d) (1) The Superintendent of Public Instruction shall establish
9 an advisory committee for the purpose of providing
10 recommendations to the Superintendent and the state board on all
11 of the following:

12 (A) How to include primary language assessments and their
13 scores in the state's assessment system and in any successor
14 assessment system and the successor state and federal
15 accountability system.

16 (B) How to modify the state's successor assessment system as
17 specified in subdivision (b).

18 (C) How to include the accommodations in the state's successor
19 assessment system as specified in subdivision (c).

20 (2) The majority of the advisory committee shall be comprised
21 of persons with demonstrated expertise in developing academic
22 assessments specific to English learners and persons with
23 demonstrated experience in research and data specific to English
24 learners.

25 SEC. 3. Section 60640 of the Education Code is amended to
26 read:

27 60640. (a) There is hereby established the Standardized Testing
28 and Reporting Program, to be known as the STAR Program.

29 (b) From the funds available for that purpose, each school
30 district, charter school, and county office of education shall
31 administer to each of its pupils in grades 2 to 11, inclusive, the
32 standards-based achievement test provided for in Section 60642.5.
33 The state board shall establish a testing period to provide that all
34 schools administer these tests to pupils at approximately the same
35 time during the instructional year, except as necessary to ensure
36 test security and to meet the final filing date.

37 (c) The publisher and the school district shall provide two
38 makeup days for the testing of previously absent pupils within the
39 testing period established by the state board in subdivision (b).

1 (d) The governing board of the school district may administer
2 achievement tests in grades other than those required by
3 subdivision (b) as it deems appropriate.

4 (e) Pursuant to Section 1412(a)(17) of Title 20 of the United
5 States Code, individuals with exceptional needs, as defined in
6 Section 56026, shall be included in the testing requirement of
7 subdivision (b) with appropriate accommodations in administration,
8 where necessary, and those individuals with exceptional needs
9 who are unable to participate in the testing, even with
10 accommodations, shall be given an alternate assessment.

11 (f) (1) Primary language tests administered pursuant to this
12 subdivision and subdivision (g) shall be subject to the requirements
13 of subdivision (a) of Section 60641. These primary language tests
14 shall produce individual pupil scores that are valid and reliable.

15 (2) Notwithstanding any other law, the state board shall
16 designate for use, as part of this program, a single primary language
17 test in each language for which a test is available for grades 2 to
18 11, inclusive, pursuant to the process used for designation of the
19 assessment chosen in the 1997–98 fiscal year, as specified in
20 Section 60643, as applicable.

21 (3) The primary language assessments developed pursuant to
22 this subdivision and subdivision (g) shall be developed to satisfy
23 all the requirements of the federal No Child Left Behind Act of
24 2001 (20 U.S.C. Sec. 6301 et seq.), including the requirements
25 regarding validity, reliability, and comparability. The testing
26 contractor chosen for the purpose of developing the primary
27 language assessments shall report to the state board as to how these
28 requirements have been met. The primary language assessments
29 developed pursuant to this subdivision and subdivision (g) are
30 subject to the requirements of subdivision (a) of Section 60641.

31 (4) (A) The department shall use funds made available pursuant
32 to Title VI of the federal No Child Left Behind Act of 2001 (20
33 U.S.C. Sec. 6301 et seq.) and appropriated by the annual Budget
34 Act for the purpose of developing and adopting primary language
35 assessments that are aligned to the state academic content
36 standards. Subject to the availability of funds, primary language
37 assessments shall be developed and adopted for reading/language
38 arts and mathematics in the dominant primary language of
39 limited-English-proficient pupils. The dominant primary language
40 shall be determined by the count in the annual language census of

1 the primary language of each limited-English-proficient pupil
2 enrolled in the California public schools.

3 (B) Once a dominant primary language assessment is available
4 for use for a specific grade level, it shall be administered in place
5 of the assessment designated pursuant to paragraph (1) for that
6 grade level.

7 (C) In choosing a contractor to develop a primary language
8 assessment the state board shall consider the criteria for choosing
9 a contractor or test publisher as specified by Section 60643, and
10 as specified by Section 60642.5, as applicable. The contractor shall
11 have expertise and experience in developing primary language test
12 items.

13 (D) Subject to the availability of funds, the assessments shall
14 be developed in grade order starting with the lowest grade subject
15 to the STAR Program.

16 (E) If the state board contracts for the development of primary
17 language assessments or test items to augment an existing
18 assessment, the state shall retain ownership rights to the assessment
19 and the test items. With the approval of the state board, the
20 department may license the test for use in other states subject to a
21 compensation agreement approved by the Department of Finance.

22 (F) On or before January 1, 2006, the department shall submit
23 to the Legislature a report on the development and implementation
24 of the initial primary language assessments and recommendations
25 on the development and implementation of future assessments and
26 funding requirements.

27 (g) A pupil identified as limited English proficient pursuant to
28 the administration of a test made available pursuant to Section
29 60810 who is enrolled in any of grades 2 to 11, inclusive, shall be
30 required to take a test in his or her primary language if a test is
31 available. English learners required to take this test include either:

32 (1) Those who receive instruction in their primary language.

33 (2) Those who are literate in their primary language as
34 determined by the results of the first administration of the primary
35 language assessment and have been enrolled in a school in the
36 United States for less than three consecutive years.

37 (h) Public schools providing dual immersion programs may use
38 the primary language assessments pursuant to subdivision (g) for
39 the purpose of assessing pupils who are enrolled in dual immersion
40 programs and who are nonlimited English proficient, as described

1 in Section 60643. This assessment shall be administered at the
2 school district's expense, and only if the school district enters into
3 an agreement for that purpose with the state testing contractor.

4 (i) The results of a primary language assessment administered
5 to English learners pursuant to subdivision (g) shall be used to
6 determine adequate yearly progress pursuant to the federal No
7 Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.) and
8 shall begin in the 2012–13 school year. However, for pupils to
9 whom the high school exit examination is administered, the high
10 school exit examination shall be used to determine adequate yearly
11 progress rather than as an achievement test administered pursuant
12 to this section.

13 (j) The results of a primary language assessment administered
14 to English learners pursuant to subdivision (g) shall also be used
15 for purposes of the Academic Performance Index (API) and shall
16 begin in the 2012–13 school year.

17 (k) For purposes of subdivisions (i) and (j), only the highest test
18 score results of the primary language standards test or the English
19 standards test shall be included.

20 (l) (1) The Superintendent shall apportion funds to school
21 districts to enable school districts to meet the requirements of
22 subdivisions (b), (e), (f), and (g).

23 (2) The state board annually shall establish the amount of
24 funding to be apportioned to school districts for each test
25 administered and annually shall establish the amount that each
26 publisher shall be paid for each test administered under the
27 agreements required pursuant to Section 60643. The amounts to
28 be paid to the publishers shall be determined by considering the
29 cost estimates submitted by each publisher each September and
30 the amount included in the annual Budget Act, and by making
31 allowance for the estimated costs to school districts for compliance
32 with the requirements of subdivisions (b), (e), (f), and (g).

33 (3) An adjustment to the amount of funding to be apportioned
34 per test shall not be valid without the approval of the Director of
35 Finance. A request for approval of an adjustment to the amount
36 of funding to be apportioned per test shall be submitted in writing
37 to the Director of Finance and the chairpersons of the fiscal
38 committees of both houses of the Legislature with accompanying
39 material justifying the proposed adjustment. The Director of
40 Finance is authorized to approve only those adjustments related

1 to activities required by statute. The Director of Finance shall
2 approve or disapprove the amount within 30 days of receipt of the
3 request and shall notify the chairpersons of the fiscal committees
4 of both houses of the Legislature of the decision.

5 (m) For purposes of making the computations required by
6 Section 8 of Article XVI of the California Constitution, the
7 appropriation for the apportionments made pursuant to paragraph
8 (1) of subdivision (l), and the payments made to the publishers
9 under the contracts required pursuant to Section 60643 or
10 subparagraph (C) of paragraph (1) of subdivision (a) of Section
11 60605 between the department and the contractor, are “General
12 Fund revenues appropriated for school districts,” as defined in
13 subdivision (c) of Section 41202, for the applicable fiscal year,
14 and included within the “total allocations to school districts and
15 community college districts from General Fund proceeds of taxes
16 appropriated pursuant to Article XIII B,” as defined in subdivision
17 (e) of Section 41202, for that fiscal year.

18 (n) As a condition for receiving an apportionment pursuant to
19 subdivision (l), a school district shall report to the Superintendent
20 all of the following:

21 (1) The number of pupils enrolled in the school district in grades
22 2 to 11, inclusive.

23 (2) The number of pupils to whom an achievement test was
24 administered in grades 2 to 11, inclusive, in the school district.

25 (3) The number of pupils in paragraph (1) who were exempted
26 from the test at the request of their parents or guardians.

27 (4) The number of pupils to whom a primary language
28 assessment was administered in grades 2 to 11, inclusive, in the
29 school district.

30 (o) The Superintendent and the state board are authorized and
31 encouraged to assist postsecondary educational institutions to use
32 the assessment results of the California Standards Tests, including,
33 but not limited to, the augmented California Standards Tests, for
34 academic credit, placement, or admissions processes.

35 (p) The Superintendent, with the approval of the state board,
36 annually shall release to the public test items from the
37 standards-based achievement tests pursuant to Section 60642.5
38 administered in previous years. The minimum number of test items
39 released per year shall be equal to 25 percent of the total number
40 of test items on the test administered in the previous year.

SEC. 4. Section 60643 of the Education Code is amended to read:

60643. (a) To be eligible for consideration under Section 60642.5 by the state board, test publishers shall agree in writing each year to meet the following requirements, as applicable, if selected:

(1) Enter into an agreement, pursuant to subdivision (e) or (f), with the department by October 15 of that year.

(2) Align the standards-based achievement test provided for in Section 60642.5 to the academically rigorous content and performance standards adopted by the state board.

(3) Comply with subdivisions (c) and (d) of Section 60645.

(4) Provide valid and reliable individual pupil scores to parents or guardians, teachers, and school administrators.

(5) Provide valid and reliable aggregate scores to school districts and county boards of education in all of the following forms and formats:

(A) Grade level.

(B) School level.

(C) District level.

(D) Countywide.

(E) Statewide.

(F) Comparison of statewide scores relative to other states.

(G) For pupils who are English learners, their program of instruction, time in the program of instruction, and their English proficiency level as determined by the California English Language Development Test.

(6) Provide disaggregated scores, based on limited-English-proficient status and nonlimited-English-proficient status. For purposes of this section, pupils with “nonlimited-English-proficient status” shall include the total of those pupils who are English-only pupils, fluent-English-proficient pupils, and redesignated fluent-English-proficient pupils. These scores shall be provided to school districts and county boards of education in the same forms and formats listed in paragraph (5).

(7) Provide disaggregated scores by pupil gender and ethnicity and provide disaggregated scores based on whether pupils are economically disadvantaged or not. These disaggregated scores shall be in the same forms and formats as listed in paragraph (5).

In any one year, the disaggregation shall entail information already

1 being collected by school districts, county offices of education, or
2 charter schools.

3 (8) Provide disaggregated scores for pupils who have
4 individualized education programs and have enrolled in special
5 education, to the extent required by federal law. These scores shall
6 be provided in the same forms and formats listed in paragraph (5).
7 This section shall not be construed to exclude the scores of special
8 education pupils from any state or federal accountability system.

9 (9) Provide information listed in paragraphs (5), (6), (7), and
10 (8) to the department and the state board in the medium requested
11 by each entity, respectively.

12 (b) It is the intent of the Legislature that the publisher work with
13 the Superintendent and the state board in developing a methodology
14 to disaggregate statewide scores as required in paragraphs (6) and
15 (7) of subdivision (a), and in determining which variable indicated
16 on the STAR testing document shall serve as a proxy for
17 “economically disadvantaged” status pursuant to paragraph (7) of
18 subdivision (a).

19 (c) Access to information about individual pupils or their
20 families shall be granted to the publisher only for purposes of
21 correctly associating test results with the pupils who produced
22 those results or for reporting and disaggregating test results as
23 required by this section. School districts are prohibited from
24 excluding a pupil from the test if a parent or parents decline to
25 disclose income. This chapter does not abridge or deny rights to
26 confidentiality contained in the federal Family Educational Rights
27 and Privacy Act of 1974 (20 U.S.C. Sec. 1232g) or other applicable
28 state and federal law that protect the confidentiality of information
29 collected by educational institutions.

30 (d) Notwithstanding any other law, the publisher of the
31 standards-based achievement test provided for in Section 60642.5
32 or any contractor under subdivision (f) shall comply with all of
33 the conditions and requirements enumerated in subdivision (a), as
34 applicable, to the satisfaction of the state board.

35 (e) (1) A publisher shall not provide a test described in Section
36 60642.5 or 60650 or in subdivision (f) of Section 60640 for use
37 in California public schools, unless the publisher enters into a
38 written contract with the department as set forth in this subdivision.

39 (2) The department shall develop, and the state board shall
40 approve, a contract to be entered into with a publisher pursuant to

1 paragraph (1). The department may develop the contract through
2 negotiations with the publisher.

3 (3) For purposes of the contracts authorized pursuant to this
4 subdivision, the department is exempt from the requirements of
5 Part 2 (commencing with Section 10100) of Division 2 of the
6 Public Contract Code and from the requirements of Article 6
7 (commencing with Section 999) of Chapter 6 of Division 4 of the
8 Military and Veterans Code.

9 (4) The contracts shall include provisions for progress payments
10 to the publisher for work performed or costs incurred in the
11 performance of the contract. Not less than 10 percent of the amount
12 budgeted for each separate and distinct component task provided
13 for in each contract shall be withheld pending final completion of
14 all component tasks by that publisher. The total amount withheld
15 pending final completion shall not exceed 10 percent of the total
16 contract price.

17 (5) The contracts shall require liquidated damages to be paid
18 by the publisher in the amount of up to 10 percent of the total cost
19 of the contract for any component task that the publisher through
20 its own fault or that of its subcontractors fails to substantially
21 perform by the date specified in the agreement.

22 (6) The contracts shall establish the process and criteria by
23 which the successful completion of each component task shall be
24 recommended by the department and approved by the state board.

25 (7) The publishers shall submit, as part of the contract
26 negotiation process, a proposed budget and invoice schedule, that
27 includes a detailed listing of the costs for each component task
28 and the expected date of the invoice for each completed component
29 task.

30 (8) The contracts shall specify the following component tasks,
31 as applicable, that are separate and distinct:

32 (A) Development of new tests or test items as required by
33 paragraph (2) of subdivision (a).

34 (B) Test materials production or publication.

35 (C) Delivery of test materials to school districts.

36 (D) Test processing, scoring, and analyses.

37 (E) Reporting of test results to the school districts, including,
38 but not limited to, all reports specified in this section.

39 (F) Reporting of test results to the department, including, but
40 not limited to, the electronic files required pursuant to this section.

1 (G) All other analyses or reports required by the Superintendent
2 to meet the requirements of state and federal law and set forth in
3 the agreement.

4 (9) The contracts shall specify the specific reports and data files,
5 if any, that are to be provided to school districts by the publisher
6 and the number of copies of each report or file to be provided.

7 (10) The contracts shall specify the means by which any delivery
8 date for materials to each school district shall be verified by the
9 publisher and the school district.

10 (11) School districts may negotiate a separate agreement with
11 the publisher for any additional materials or services not within
12 the contracts specified in this subdivision, including, but not limited
13 to, the administration of the tests to pupils in grade levels other
14 than grades 2 to 11, inclusive. Any separate agreement is not within
15 the scope of the contract specified in this subdivision.

16 (f) The department, with approval of the state board, may enter
17 into a separate contract for the development or administration of
18 a test authorized pursuant to this part, including, but not limited
19 to, item development, coordination of tests, assemblage of tests
20 or test items, scoring, or reporting. The liquidated damages
21 provision set forth in paragraph (5) of subdivision (e) shall apply
22 to a contract entered into pursuant to this subdivision.

23 *SEC. 5. This act shall become operative on January 1, 2012.*

24 ~~SEC. 5.~~

25 *SEC. 6.* If the Commission on State Mandates determines that
26 this act contains costs mandated by the state, reimbursement to
27 local agencies and school districts for those costs shall be made
28 pursuant to Part 7 (commencing with Section 17500) of Division
29 4 of Title 2 of the Government Code.